

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 Portland Division

4  
5 IN THE MATTER OF THE )  
6 EXTRADITION OF )  
7 RASEMA HANDANOVIC, ) Case No. 11-MC-09097-ST  
8 aka "ZOLJA," )  
aka SAMMY RASEMA YETISEN, ) October 20, 2011  
9 )  
----- )  
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11  
12 TRANSCRIPT OF PROCEEDINGS

13 THE HONORABLE JANICE M. STEWART

14 UNITED STATES MAGISTRATE JUDGE

15 MOTION FOR RELEASE HEARING

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Proceedings - 10/20/11

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1 (October 20, 2011)

2 TRANSCRIPT OF PROCEEDINGS

3 (In open court:)

4 DEPUTY COURTROOM CLERK: All rise. The United  
5 States District Court for the District of Oregon is now in  
6 session. The Honorable Janice M. Stewart presiding.

7 MR. ATKINSON: Good morning, Judge Stewart. On  
8 behalf of the United States, we're here in Miscellaneous  
9 11-997 in the matter of the extradition of  
10 Rasema Handanovic. Ms. Handanovic is here. She's in the  
11 custody of the U.S. marshal, and she's with her counsel,  
12 Lisa Hay, an assistant federal defender.

13 Today's proceedings are to adjudicate the  
14 fugitive's renewed motion for release.

15 THE COURT: All right. Ms. Hay?

16 MS. HAY: Good morning, Your Honor. Your Honor, I  
17 did file a motion with some exhibits. I would like to call  
18 some witnesses to assist in our argument that Ms. Handanovic  
19 is not a danger or a flight risk and that special  
20 circumstances exist for her release.

21 THE COURT: All right. I should note that both of  
22 you have submitted legal memoranda to the Court in advance  
23 of the hearing, which I have reviewed. So we'll go ahead at  
24 this point, then, and proceed with the evidence, and then I  
25 can hear arguments from you after you put on your evidence.

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1 I assume the Government has no evidence other than  
2 what you presented in your memoranda. Is that right?

3 MR. ATKINSON: We're not going to call any  
4 witnesses, Your Honor.

5 THE COURT: All right. Very good. All right.  
6 Ms. Hay, then, you may proceed.

7 MS. HAY: Thank you, Your Honor.

8 THE COURT: Your first witness?

9 MS. HAY: We'll call the first witness.  
10 Danijela Marjanovic.

11 DEPUTY COURTROOM CLERK: Please come forward and  
12 be sworn. Raise your right hand.

13  
14 DANIJELA MARJANOVIC,  
15 called as a witness in behalf of the Respondent, being first  
16 duly sworn, is examined and testified as follows:

17  
18 DEPUTY COURTROOM CLERK: Please be seated and  
19 please state your name and spell your first and last name  
20 for the record.

21 THE WITNESS: My name is D-A-N-I-J-E-L-A. Last  
22 name M-A-R-J-A-N-O-V-I-C.

23 DEPUTY COURTROOM CLERK: Thank you.

24 MR. ATKINSON: I'm sorry, ma'am. Would you spell  
25 your last name again, please?

1 THE WITNESS: M-A-R-J-A-N-O-V-I-C.

2 THE COURT: Okay.

3

4 DIRECT EXAMINATION

5 BY MS. HAY:

6 Q. Ms. Marjanovic, you've submitted a report in support of  
7 Ms. Handanovic already; correct?

8 A. Yes.

9 Q. That's one of the exhibits in front of the Court.

10 Can you tell us, as background, how old you are,  
11 your citizenship, and what kind of work you do?

12 A. I'm 31 years old. I worked at OHSU as an  
13 administrative coordinator for 11 years. I'm unemployed for  
14 three months. I've known Rasema -- Sammy -- Handanovic  
15 pretty much my whole life. She lived in the house right  
16 across from mine, from our family. We grew up together,  
17 playing with other kids. We were separated in '93. I know  
18 her as a good, caring person.

19 Q. Let me interrupt you for one moment. When you say her  
20 family lived near yours, are you speaking back in Bosnia?

21 A. In Bosnia. Sanski Most. Her family and her lived  
22 right across from my family. Like, it was the same street,  
23 just right across the street. So my window would look at  
24 her window.

25 Q. So you had a chance to know Ms. Handanovic's character

1 before the war in your country?

2 A. Yes.

3 Q. And then tell us, what was your impression of her  
4 character and the kind of person she was?

5 A. She was always a good listener. Any time we had  
6 problems in school -- I'm talking back in Bosnia now,  
7 because I was a child back then. I was 12, 13. She was  
8 always listening; helped us with homework. She would help  
9 us play. Make clothes for Barbies. I talk about her going  
10 out, because she was older. She would dress up. She was  
11 always pretty. We, as kids, would always come outside just  
12 to see her going out; how she dressed up and how she'd do  
13 her makeup. She was beautiful.

14 Q. You mentioned in your letter that you were raised in a  
15 different religion from Ms. Handanovic.

16 A. Yes.

17 Q. That her family was Muslim and your family was  
18 Christian?

19 A. Yes.

20 Q. Did you ever hear her say anything about religion or  
21 did that have an effect on your relationship?

22 A. No. I could never feel anything -- any bad feelings or  
23 anything towards me from Sammy. Never. I could never feel  
24 anything that she -- she -- she never looked at me as a  
25 Christian or -- you know, my mom is Catholic and my dad is

1 Christian. She -- we never talked about religion. That was  
2 never the case between us. We never argued about it or  
3 anything.

4 Q. Do you remember any incidents in her family or anybody  
5 ever expressing any bias; something that would stand out in  
6 your mind today?

7 A. No. No.

8 MR. ATKINSON: Excuse me, Your Honor. Objection  
9 on the grounds of relevance.

10 THE COURT: Well, I'll allow a great deal of  
11 latitude with respect to the evidence that can be presented  
12 in today's hearing. Character generally is not particularly  
13 relevant to any release decision, other than perhaps it  
14 shows responsibility or truthfulness and those sorts of  
15 things, but I'll go ahead and, as I say, give you fairly  
16 wide latitude today.

17 MS. HAY: Thank you, Your Honor.

18 THE WITNESS: I can -- I can say that we all  
19 celebrated -- Muslims, Croats, and Catholics and  
20 Christians -- we all celebrated same -- I mean, Muslim and  
21 Christian holidays together. For Easter we would dye eggs,  
22 color eggs. For Muslim holidays we would go kiss her  
23 grandma's hand just to get money and do things like that.  
24 But religion was never a big issue before the war started.  
25 And then during the war everything broke apart. I haven't

1 even seen her since then. Since -- until '97.

2 BY MS. HAY (Continuing)

3 Q. So in '93 you were separated and you didn't see her  
4 again until 1997?

5 A. Correct.

6 Q. And in 1997, that was in the United States?

7 A. Correct. In Portland.

8 Q. Tell us about your dealings with Ms. Handanovic here in  
9 the United States.

10 A. Ever since we saw each other in '97, she was helping  
11 me. She was helping us, my whole family, get furniture, get  
12 anything to start -- anything that we needed to start  
13 living. She helped me open my first checking account. She  
14 helped me with homework. She would listen to me. She was  
15 helping me make it here, pretty much, because I was very  
16 depressed that I had to move here in the first place. She  
17 was always talking to me and telling me different options to  
18 become successful.

19 Q. Have you ever known her to be violent or to express  
20 anger or rage against people?

21 A. I've never seen her angry or never lost her temper in  
22 front of me.

23 Q. Have you had the chance to see her as a mother?

24 A. She's a great mother.

25 Q. What can you tell us about her mothering abilities?

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10

1 A. She was -- even though she had low income in the past  
2 couple of years, she didn't want to move to a cheaper area  
3 in Portland, just to keep her son in the same school, so he  
4 doesn't sacrifice.

5 Q. So she wanted to keep her son in the same --

6 A. In the same school, so he doesn't have problems and  
7 just to be -- to stay in the same school, same teachers,  
8 same kids; just to be more successful.

9 Q. Do you have an opinion of if Ms. Handanovic were  
10 released by this Court whether she would stay here in  
11 Portland and do what she's told to do?

12 A. I'm positive she would stay here with her son.

13 Q. Okay.

14 A. Her family is here and her home is here.

15 MS. HAY: I don't have any further questions.

16 THE COURT: Cross-examination?

17

18 CROSS-EXAMINATION

19 BY MR. ATKINSON:

20 Q. Ms. Marjanovic, has Ms. Handanovic ever spoken with you  
21 about her training when she was in the Bosnian military?

22 A. No.

23 Q. Did she ever speak with you about explosives training  
24 she may have taken or specialized weapons training or  
25 special forces training at all?

1 A. No.

2 Q. Do you know whether Ms. Handanovic regularly takes  
3 medications?

4 A. I know in the past couple of years that she's been ill  
5 and that she's been taking medications, but I know -- I  
6 don't know what kind.

7 Q. What sorts of illnesses does she have, ma'am?

8 A. As much as I can remember, myo -- I can't -- I can't  
9 remember the diagnosis, but I know it's the body aches all  
10 over. I can't remember the name of the --

11 Q. Does she have any psychiatric illnesses?

12 A. I don't remember.

13 Q. Bipolar?

14 A. I don't remember. I don't think so.

15 Q. Were you here when she was presented to  
16 Judge Ashmanskas back on April 11th?

17 A. April 11. I believe I was here the very first time.  
18 So that was -- that was back in April? Yes. Yes.

19 Q. You heard her wailing and screaming through the walls  
20 of the court, didn't you?

21 A. I wasn't here then. I was not here when she was  
22 screaming or yelling through the halls.

23 Q. If she were to be wailing and screaming and pounding  
24 her head against the wall, that would be inconsistent  
25 with --

1 MS. HAY: Objection to the question. That's  
2 adding evidence that's not in the record.

3 MR. ATKINSON: I'll withdraw the question.

4 THE COURT: Very good.

5 BY MR. ATKINSON (Continuing)

6 Q. Does she drive, ma'am? Does she have a car?

7 A. Yes.

8 Q. As far as you know, she has a driver's license and  
9 regularly drives?

10 A. I know she has a driver's license.

11 MR. ATKINSON: Those are my questions.

12 THE COURT: Any redirect?

13 MS. HAY: No, Your Honor.

14 THE COURT: Thank you. You may step down.

15 MS. HAY: Your Honor, I'll call Marla Ransom.

16 DEPUTY COURTROOM CLERK: Please come forward and  
17 raise your right hand.

18 MARLA RANSOM,

19 called as a witness in behalf of the Respondent, being first  
20 duly sworn, is examined and testified as follows:

21  
22 DEPUTY COURTROOM CLERK: Please be seated. Please  
23 state your name, your full name, and spell your last name  
24 for the record.

25 THE WITNESS: My name is Marla Ransom,

1 R-A-N-S-O-M.

2 DEPUTY COURTROOM CLERK: Thank you.

3

4 DIRECT EXAMINATION

5 BY MS. HAY:

6 Q. Ms. Ransom, can you tell us how old you are and your  
7 citizenship?

8 A. I'm 50 years old, and I'm a United States American.

9 Q. Do you have any criminal record?

10 A. No.

11 Q. Is it right that you're currently a home -- a  
12 homemaker?

13 A. Uh-huh. Yes, it is.

14 Q. Can you tell us how long you've known Ms. Handanovic.

15 A. I met Sammy when her son was about a year and a half  
16 years old and I began doing day care for him.

17 Q. So that's a little more than 11 years ago; 10 years  
18 ago?

19 A. Yes. Yes.

20 Q. So you helped provide day care for her son?

21 A. Uh-huh, I did.

22 Q. Have you stayed in touch with the family since then?

23 A. Absolutely, yeah. We're like family. I've known them  
24 for many years, and Sammy and I have been very close. Just  
25 like family.

1 Q. Can you tell us your opinion of her character and her  
2 representation in the community?

3 A. Yeah. Sammy is a very loving, very caring, very  
4 giving -- she's a very good mother. As a friend, she was  
5 always there for me no matter what it was that I needed.

6 I was very sick and in the hospital for about two  
7 months, and she rarely left my side. She was always right  
8 there. My daughter moved in with her for a few months and  
9 helped her with Ronai, as well, so --

10 Q. Was there a time when you were living in Vernonia that  
11 she was especially helpful to you?

12 A. Absolutely.

13 Q. Could you tell us about that incident?

14 A. Uh-huh. We moved out there, and there were many times  
15 where I didn't have food, and she would come out there in  
16 the snow, in the rain, no matter what it was. During the  
17 flood, she was always there. No matter what I needed.

18 Q. So she would drive food and supplies out to you when  
19 you were stranded?

20 A. Absolutely. Absolutely.

21 Q. Is that the kind of actions that you could see her  
22 doing in a lot of situations?

23 A. Uh-huh. Yeah. Not just for me, but for a lot of other  
24 people, as well.

25 Q. Are you aware if she suffers from any kind of medical

1       illnesses?

2       A.     Yeah.   Sammy has fibromyalgia.

3       Q.     Fibromyalgia?

4       A.     Uh-huh.   It's very painful, and I've seen her become  
5       very sick.   I've been there to help her, as well.

6       Q.     Can you tell us some of the symptoms you've seen when  
7       you've had to try to help care for her?

8       A.     Oh, yeah.   Fibromyalgia is a very painful disease, and  
9       there's really no cure for it.   She's had to take different  
10      medications, and it's -- it can be very debilitating.

11      Q.     Is that something that's gotten worse over the last  
12      years that you've known her?

13      A.     Uh-huh, yeah.   When I first met her, she was having  
14      problems with her hands and her arms, and it soon just kind  
15      of slowly progresses through your body, where she had  
16      problems with her legs and her back and -- but she still  
17      worked, still took care of her son.   If I needed anything  
18      when I was sick, she was right there for me.

19      Q.     Do you have an opinion about whether she's a dangerous  
20      or violent person based on your ten years of knowing her?

21      A.     There's no way I can ever see Sammy being violent to  
22      anyone at all, no.

23      Q.     And what about whether she would stay here in Portland  
24      if the Court ordered her to stay here?   What do you think?

25      A.     Oh, she would stay here.   Sammy is very connected to

1 all of us. You know, she has a pretty big family here now.  
2 She has a lot of friends and Ronai is her son, and she would  
3 never, ever want to leave. So, no, she's no flight risk  
4 whatsoever.

5 Q. When you say she would never want to leave, what about  
6 disrupting her son and taking him with her? Do you think  
7 she would flee and do that?

8 A. Never.

9 Q. Why not?

10 A. No. She has always made for sure that Ronai was very  
11 stable in school and with family and friends. She's always  
12 made for sure that he had whatever he needed here.

13 Q. You said in your letter that you feel that  
14 Ms. Handanovic has upheld the very definition of what we  
15 revere to be a U.S. citizen. What do you mean by that?

16 A. She has abided by every law. She has never been  
17 criminally arrested for anything other than the war crimes.  
18 She just is the epitome of a U.S. citizen. She's raised her  
19 son here. She's raised him with morals.

20 MS. HAY: Okay. Thank you. No further questions.

21 THE COURT: Cross-examination?

22

23 CROSS-EXAMINATION

24 BY MR. ATKINSON:

25 Q. Ms. Ransom, has Ms. Handanovic attempted suicide on a

1 few occasions?

2 A. Not that I'm aware of.

3 Q. You've described her fibromyalgia. What other  
4 illnesses does she suffer from?

5 A. Honestly, that's the only one that I really know of is  
6 her fibromyalgia.

7 Q. Did she ever talk with you or did you ever hear about,  
8 from some other source, any specialized training that she  
9 may have received when she was a member of the military in  
10 Bosnia?

11 A. She never talked to me about anything like that.

12 Q. She never talked about specialized weapons training or  
13 special forces training?

14 A. Nothing. I knew nothing of her life back then.

15 Q. Okay. And you know nothing about the facts of this  
16 case; is that right?

17 A. That's right.

18 Q. You don't know how many people she's alleged to have  
19 harmed --

20 A. Huh-uh.

21 Q. -- or killed?

22 A. No.

23 Q. Were you here when she initially came into court back  
24 on April 11th of this year?

25 A. No, I wasn't here for that. I didn't come in until --

1 I don't know. I think she had been here two, maybe three  
2 weeks.

3 Q. Do you know what medications she takes?

4 A. I do not. I --

5 Q. Did you see her that day, on April 11th?

6 A. No. I was not here for that.

7 Q. You don't know whether she had taken her medication  
8 that day; is that right?

9 A. That's right. I don't know.

10 MR. ATKINSON: Those are my questions.

11 THE COURT: Any redirect?

12 MS. HAY: No, Your Honor.

13 THE COURT: Thank you. You may step down.

14 MS. HAY: Your Honor, I'd like to call  
15 John Cochran.

16 DEPUTY COURTROOM CLERK: Please come forward.

17 Please raise your right hand.

18

19 JOHN COCHRAN,  
20 called as a witness in behalf of the Respondent, being first  
21 duly sworn, is examined and testified as follows:

22

23 DEPUTY COURTROOM CLERK: Please be seated.

24 Okay. Could you please state your name and spell  
25 your last name for the record.

1 THE WITNESS: Name is John Cochran. J-O-H-N.

2 C-O-C-H-R-A-N.

3 DEPUTY COURTROOM CLERK: Thank you.

4

5 DIRECT EXAMINATION

6 BY MS. HAY:

7 Q. Mr. Cochran, could you tell us, as background, your  
8 age, your citizenship, what kind of work you've done?

9 A. My age is 67. American. And I have a pension from  
10 Tri-Met and Reser's Foods, and the last years of my work I  
11 worked in private security.

12 Q. So you're currently retired; is that right?

13 A. Yes.

14 Q. And how did you come to meet Ms. Handanovic?

15 A. I met her in the workplace. She and her sister both  
16 worked in private security, and I met her 12 years ago while  
17 she was working. Actually, it was Pinkerton Security, and I  
18 knew her there.

19 Q. Were you, in fact, her supervisor at Pinkerton  
20 Security?

21 A. Yes.

22 Q. What can you tell us about how Ms. Handanovic was as a  
23 worker?

24 A. She was a very good worker. She was one of the most --  
25 maybe the most dependable of the employees. She was always

1 punctual. She never had any absenteeism. She was always  
2 dependable. When she said she would work a night shift or  
3 any shift, she would always be there. She was very  
4 reliable.

5 Q. Did you feel that she was an honest person?

6 A. Yes. She was always honest about anything she said,  
7 yes.

8 Q. And did it matter to her that she kept her word?

9 A. Yes. Yeah. I think she took pride in that.

10 Q. You had a chance to see her interacting with a number  
11 of different customers; right?

12 A. Yes.

13 Q. Did you notice any bias or discrimination or anger by  
14 Ms. Handanovic?

15 A. No. She was always very polite. Always followed the  
16 work rules closely, which was to have a -- certain rules  
17 about customer relations, and she was always good at that --  
18 dealing with people and always got along with her fellow  
19 workers very well. I never heard any complaints about  
20 anything from any of the other employees.

21 Q. Now, your health -- for reasons of health, you ended up  
22 retiring; is that correct?

23 A. Yeah, I had a stroke. I had a major stroke about five  
24 years ago, and that forced me into retirement; somewhat  
25 early retirement.

1 Q. And so are you aware of whether Ms. Handanovic's health  
2 also deteriorated after this time period?

3 A. Well, after the stroke I saw her and her sister  
4 infrequently. They would -- they would come out to my farm  
5 every year for vegetables and certain fruits, so I'd see  
6 them every year, and I still keep in contact.

7           What did you ask about?

8 Q. Well, when she was working with you, did her health  
9 keep her from working during that period?

10 A. No. Not during that period, no.

11 Q. And that was in about 1998 you met her?

12 A. '98, '99, yes. She was -- her son is 12 years old, and  
13 I knew her when she was pregnant with her son.

14 Q. That puts us back to about 1998 when you first would  
15 have known her?

16 A. Yes. Yes.

17 Q. What is your opinion about whether she would be a  
18 danger to anybody if she were out in the community?

19 A. Well, I never had any -- there was never anything that  
20 would bring that up. She never showed any kind of emotion  
21 toward that way. I mean, she was always nice and polite and  
22 got along with everybody. She never appeared to be  
23 dangerous about anything.

24 Q. And do you believe she's the kind of person who would  
25 keep her word if she said she would stay here in Portland if

1 released?

2 A. Well, I think she would, yes. She gives her word and  
3 keeps her word. Also, she's very close to her son. If her  
4 son was here, I think she would be here for that reason.

5 MS. HAY: Okay. Thank you. I have no further  
6 questions.

7 MR. ATKINSON: No questions, Your Honor.

8 THE COURT: All right. Thank you. You may step  
9 down.

10 THE WITNESS: Step down?

11 THE COURT: Yes. Thank you.

12 MS. HAY: Your Honor, I might not call every  
13 witness who's here. We submitted letters to the Court of  
14 people who wanted to support Ms. Handanovic.

15 I will call her brother-in-law, Jacob Guild.

16 DEPUTY COURTROOM CLERK: Could you please raise  
17 your right hand?

18

19 JACOB GUILD,

20 called as a witness in behalf of the Respondent, being first  
21 duly sworn, is examined and testified as follows:

22

23 DEPUTY COURTROOM CLERK: Please be seated and  
24 please state your name and spell your last name for the  
25 record.

1 THE WITNESS: Jacob Guild, G-U-I-L-D.

2 DEPUTY COURTROOM CLERK: Thank you.

3

4 DIRECT EXAMINATION

5 BY MS. HAY:

6 Q. Mr. Guild, you're married to Ms. Handanovic's sister;  
7 is that correct?

8 A. Yes.

9 Q. So you've known her about 12 years?

10 A. Yes.

11 Q. Just as background, I didn't ask you, could you tell us  
12 your age, your citizenship, and what you're doing for work  
13 or to occupy your time right now?

14 A. I'm a U.S. citizen. I'm 34 years old. I was born in  
15 Fort Collins, Colorado. I'm currently a student at PCC and  
16 a stay-at-home dad.

17 Q. And you have two young children; is that right?

18 A. Yes. Two and four.

19 Q. Are you also helping to care for Ms. Handanovic's son  
20 while she's in custody?

21 A. Yes. That's correct.

22 Q. I wanted to ask you, just generally, to give us your  
23 opinion of what kind of person you know Ms. Handanovic to  
24 be, having lived with her and her sister and known her all  
25 these years.

1 A. We have a good relationship. We were always able to  
2 problem solve and work together so that we could all do what  
3 we needed to do to get where we're at today, you know, with  
4 work and school. You know, juggling schedules, and stuff,  
5 early on with -- with Ronai's -- when he was a toddler and  
6 stuff like that. We worked together. I could always rely  
7 on her, you know, to be there for me if I needed, you know,  
8 help.

9 Q. Does she have a good work ethic?

10 A. Yes. Yeah. She was always, you know, looking to work  
11 to do what she needed to do so that she could provide for  
12 her son.

13 Q. What about her honesty and her morals and character in  
14 that way?

15 A. She's very -- I believe her to be a very honest person.  
16 She's very open-minded. She'll tell you what she believes,  
17 what she thinks, you know, and not have really a second  
18 thought about it, you know.

19 Q. Can you tell us whether religion has been a major  
20 factor in her life or her family?

21 I assume, first, you know her parents; is that  
22 correct?

23 A. I do.

24 Q. Okay. And so is religion a major factor in her life  
25 and --

1 A. I don't believe it to be a huge factor. I believe, you  
2 know, it became a big factor during the war; but that's not  
3 for me to say, I guess. But as far as her living her own  
4 personal life, you know, her being a Muslim hasn't been an  
5 issue.

6 Q. When you say it became a factor during the war, do you  
7 mean you've heard stories about what occurred during the  
8 war?

9 A. Well, it's -- you know, my understanding of the war was  
10 that, you know, a lot of it was based on ethnic -- ethnicity  
11 and things like that.

12 Q. So has she personally told you that she was reacting to  
13 people based on religion during the war or -- I'm trying to  
14 understand.

15 A. No, just from me learning about the war, you know,  
16 reading about it.

17 Q. Okay. So your understanding of the war is that during  
18 that time period many people were divided on ethnic and  
19 religious grounds?

20 A. Yes.

21 Q. Do you know whether Ms. Handanovic was expressing those  
22 kind of views to you at any time or to any other people, so  
23 antireligious or anti-ethnic --

24 A. No.

25 Q. Okay. What can you tell us about Ms. Handanovic's

1 health?

2 A. When I first met her, she was -- she was healthy, you  
3 know. She was, you know, able to go to work and, you know,  
4 work long hours. She did that for a long time; for many  
5 years. But, in time, you know, her health did start to  
6 decline. She had troubles, I think, with carpal tunnel at  
7 one point, and then it sort of turned into this fibromyalgia  
8 that she's suffered with for some time.

9 Q. And have you witnessed her in pain and suffering the  
10 kind of body aches that come with that disease?

11 A. Yeah. Yeah. Yeah, it looks painful. She's unable to  
12 get out of bed. You know, she can't walk.

13 Q. What can you tell us about her relationship with her  
14 son?

15 A. She lives her life for her son. That's -- you know, he  
16 is the cornerstone -- excuse me, the cornerstone to her  
17 life. I mean, anything that she does is for Ronai. I mean,  
18 he is everything to her, so --

19 Q. Have you considered her to be a good mother over all  
20 these years?

21 A. Yes.

22 MS. HAY: I don't have any further questions.

23 THE COURT: All right.

24

25

CROSS-EXAMINATION

1 BY MR. ATKINSON:

2 Q. Mr. Guild, were you aware that your sister-in-law had  
3 attempted suicide on a couple of occasions?

4 A. No.

5 Q. You've described her fibromyalgia. Do you know of what  
6 other illnesses she may suffer from?

7 A. I believe she had a recent diagnosis of PTSD.

8 Q. Bipolar disorder?

9 A. I'm not sure.

10 Q. Severe depression?

11 A. I'm unsure about the depression.

12 Q. Have you observed her taking medications?

13 A. She takes medications for her fibromyalgia.

14 Q. For anything else?

15 A. Not that I'm aware of.

16 Q. She's never talked to you about anything -- about it;  
17 is that right?

18 A. Not in, you know, great detail.

19 Q. Were you here when she first appeared in court back on  
20 April 11th?

21 A. I was not. I was at home with my kids.

22 MR. ATKINSON: Those are my questions.

23 THE COURT: Anything else?

24 MS. HAY: No, Your Honor.

1 THE COURT: Thank you. You may step down.

2 MS. HAY: I'd like to call Mirsada Guild.

3  
4 MIRSADA GUILD,  
5 called as a witness in behalf of the Respondent, being first  
6 duly sworn, is examined and testified as follows:

7  
8 DEPUTY COURTROOM CLERK: Witness sworn in.

9 THE WITNESS: Yes, I do.

10 DEPUTY COURTROOM CLERK: Please be seated. Please  
11 state your name and spell your first and last name for the  
12 record.

13 THE WITNESS: M-I-R-S-A-D-A, G-U-I-L-D.

14 DEPUTY COURTROOM CLERK: Thank you.

15  
16 DIRECT EXAMINATION

17 BY MS. HAY:

18 Q. Ms. Guild, you are the sister of Rasema Handanovic;  
19 correct?

20 A. Yes.

21 Q. And you've testified once already in this matter?

22 A. Yes.

23 Q. I wanted to ask you some questions about your life back  
24 in Sanski Most with Ms. Handanovic and your family. Can you  
25 tell us what it was -- what her character was like back then

1 and what kind of person she was?

2 A. Rasema is 14 months older than me, and we were pretty  
3 much raised like twins. We are always together. Even  
4 though we were so close, she was always a role model, and  
5 she always took the responsibility of older sister to take  
6 care of me and my younger brother, and she was very  
7 responsible and -- for her age, and she would set always  
8 high bars for us and --

9 Q. High bar or a high goal, you mean?

10 A. Goals that we have to achieve. But she was always  
11 there to push us and help us and then celebrate when we  
12 reached those bars and overcome them. Because my parents  
13 were self-employers and for them was really important work  
14 ethics, honesty, and push yourself as far as you can do.  
15 And Sammy was there. She was always there to help us out to  
16 be -- to go through the process.

17 At school she was always role model. She was  
18 always willing to help my younger brother and I and kids in  
19 the neighborhood. We grew up in a different society. Kids  
20 in our country, we go out in the neighborhood. Older kids  
21 watch younger kids, you know, so we can play. But Sammy was  
22 always there, a leader, to be like, Okay, let's do things  
23 that are going to help us in life. Let's go do math and  
24 create games that we will do and play that we gonna use in  
25 life.

1 Q. Okay. When you were growing up, did your families live  
2 only -- live only in Sanski Most the whole time or did you  
3 live in other places?

4 A. No. We -- our parents run business out of Croatia and,  
5 it was actually in Istra, which is part of border by Italy.

6 Q. Could you spell that name, please?

7 A. Istra, I-S-T-R-A.

8 Q. Okay. Okay.

9 A. And we spent pretty much summers in Croatia, and  
10 through school year we would be in Bosnia.

11 Q. Did your parents teach you or did you ever within your  
12 family express bias against people from Croatia?

13 A. No. The religion in our family was not emphasized  
14 ever. We -- for my dad what's really important was work  
15 ethics, honesty, and schoolwork, and -- but religion was  
16 not.

17 Q. Okay. Right when the war broke out in your -- in your  
18 town, I know things were very difficult then. Can you tell  
19 us about your sister's character during that time when the  
20 family was together during the war?

21 A. Well, Sammy -- my biggest fear then -- I was fear  
22 for -- I was 18, and my biggest fear was of rape.

23 Q. I'm sorry. What?

24 A. My biggest fear was afraid I was going to be raped.  
25 And I didn't fear being shot and killed. I always fear of

1 being raped. And we will be taken out of a house and our  
2 house would be searched. Sammy was there. She would always  
3 shelter me and she will hide me behind her so that I'm not  
4 in -- on the point in front of soldiers and that I would be  
5 their target. She would be always protecting me, younger  
6 sister.

7           And we get to the point that we started running  
8 out of food, and we will have to go to places where they  
9 will allow us to buy food, and Sammy will always take the  
10 task of going and buying food for us.

11 Q. So she would be the person who would leave the safety  
12 of the house and go out to get food for the rest of you?

13 A. Yes. Sammy and my older brother. It depends. The two  
14 of them will be the ones that pretty much took  
15 responsibility of and -- on them, and she will shelter me.  
16 She will not let me get out of the house because of my fear,  
17 and I just -- she will take whatever it takes to provide  
18 food for us.

19 Q. And a fear of rape during that time, you had already  
20 heard soldiers were raping women in the towns; is that  
21 right?

22 A. That's right.

23 Q. When was the -- what was the situation when -- the last  
24 time you saw her sister?

25 A. Well, the morning she -- we find out that there is a

1 place where she can -- we can get flour for us, and she took  
2 her bike, and she find out if we can get 50 kilograms flour.  
3 And my brother and her went to get flour for us so we could  
4 have bread on the table. Then she never came back. She was  
5 put in convoy for Travnik. We didn't find out until later  
6 in the day where she was. The convoy, we find out, that was  
7 going to Travnik, was going to Vlasic. Vlasic. It was a  
8 town. And somebody told us that they find Sammy's bike, and  
9 somebody said -- some relatives, I think, called my parents,  
10 and they said they saw Sammy and Rasim in the trailer going  
11 to Vlasic.

12 Q. Rasim is the name of your brother?

13 A. Older brother.

14 Q. R-A-S-I-M, Rasim?

15 A. Yeah. They were taken to Vlasic, and at that time  
16 Vlasic was known for taking other convoys and Vlasic is  
17 mountain, and it's about three kilometers which would be  
18 about 19 miles. And para convoys are people that will die,  
19 because they will let people get out of convoy, out of  
20 buses, trailers, or whatever they will put them in, and on  
21 the mark -- they will have to march up the mountain where  
22 the soldiers will be shooting at them.

23 Q. Okay.

24 A. There are land mines, and there was lots of people,  
25 women and soldiers that will die. And when you make on the

1 other side, it was Travnik, where it was Muslim territory.  
2 And your option was because there was overflood of -- of  
3 refugees. That you have option of either if you don't have  
4 anybody, you have to join military for survival.

5 Q. Okay. I won't ask you to go through all of what you  
6 know your sister experienced during the war. You testified  
7 about some of that before. I'm sorry to have you go through  
8 any of this again.

9 I wanted to ask you to talk about your sister here  
10 in the United States, then. How you came to meet up with  
11 her in the United States and what her character and her  
12 reputation has been here.

13 A. I was in Germany during war, and I couldn't go to  
14 school. My dream was to be a dentist. And she invited me  
15 and she said she going to help me to get -- to achieve my  
16 dream.

17 Q. She invited you to the United States?

18 A. To the United States. And she said -- she told me that  
19 we can be what we are in this country. We can be honest and  
20 hardworking people. The sky is the limit. We -- she going  
21 to help me to learn English and everything.

22 I arrive, I think, it was Wednesday or Thursday  
23 night, and she had me already enrolled for English classes  
24 on Monday. I didn't speak absolutely any English when I  
25 came here. She worked 60 to 80 hours so I could focus on my

1 education, and she was always there for me.

2 I, at some point in the process of going, I became  
3 dental assistant. I work as a dental assistant, and I was  
4 working to achieve my goal to be a dentist. And it got to  
5 the point that I learned I cannot be a dentist because of --  
6 I faint when I see blood, and I -- my world was crushed, but  
7 Sammy encouraged me after that that it's not the end of the  
8 world; that I have other skills; that my math skills can  
9 help people, and I -- I can do other stuff with my skills  
10 and still help people and be in the work force and  
11 successful and go to school and --

12 Q. She encouraged you and helped you become a citizen  
13 here?

14 A. Yes.

15 Q. And are you working today?

16 A. I am.

17 Q. Where do you work now?

18 A. I work for OHSU. I work as a financial analyst.

19 Q. Okay. So using the math skills you were mentioning?

20 A. Yeah.

21 Q. Okay.

22 A. And skills that -- I work in research department, and I  
23 feel that with my work I contribute great deal to the  
24 society. And because I work for researchers, and I have  
25 unique position -- probably my only position -- only person

1 who does -- I mean, there is -- OHSU has finance, but I go  
2 beyond that. I do application with researcher to get funds.

3 Q. Sorry to interrupt you. This is something that your  
4 sister helped you to achieve to get to this position?

5 A. Yes. I --

6 Q. Can I ask you, do you -- do you know if she's helped  
7 other people in the United States in similar ways?

8 A. Yes. For her was -- she will always look over all the  
9 benefit of everyone. We will -- at some point we live  
10 together -- my husband, her, and I -- and we will -- for her  
11 was always success of people important, and my neighbor's  
12 daughter, when she struggle with math, she will find time to  
13 do math with her.

14 Q. She will --

15 A. She will do math. Study problems with math.

16 She will go to church and help collect food and  
17 hand out to less fortunate people here in America. She will  
18 organize -- for the church she will organize food drive.

19 Q. Okay. I won't ask you to go through all the different  
20 examples that she has done, but can you say she is somebody  
21 who's done a lot of good works here in the United States?

22 A. Yes.

23 Q. Okay. I wanted to turn to an area that's also  
24 difficult to discuss, but you are currently taking care of  
25 her son Ronai; correct?

1 A. Yes.

2 Q. And would it be fair to say that even before this whole  
3 event with your sister getting arrested Ronai would be  
4 considered a fragile child in some ways?

5 A. Yes.

6 Q. And could you just tell us what happened, what was  
7 the -- one of the triggering events that you know of?

8 A. Well, after the war -- Sammy had bad marriage and the  
9 environment was not very good for Ronai, and over the time  
10 his father will come in and out of Ronai's life, and there  
11 was incident, I think, two or three years -- in 2009, around  
12 Ronai's birthday. Sammy was at work, and neighbor was  
13 taking care of -- after school for Ronai and another  
14 neighbor child when his father came into the house. And he  
15 didn't call or anything, and he attacked the neighbor. And  
16 Ronai got so scared, because all along he was threatening  
17 that he was going to take Ronai to Turkey.

18 Just to clarify, Sammy's ex-husband is from  
19 Turkey, but he's a Kurd. And he will always threaten us  
20 that he's going to take Ronai to his parents' and his  
21 sister's to take care of him. At some point, he even offer  
22 money to Sammy to just hand him Ronai.

23 So he threaten that he going to come, and Ronai  
24 run into the restroom and hide himself and call his mother  
25 to come home. By the time she came home, he was already

1 gone.

2           But Ronai got really sick. And for several days  
3 he had -- was running fever. And then the doctors couldn't  
4 figure out what was going on. Nothing will help with the  
5 fever. And she asked Sammy if he was under any traumatic --  
6 did anything traumatic happen in his life, and Sammy brought  
7 up the incident with the father, and she suggested that he  
8 needs to go see counselor.

9 Q. And so since about that time has he been seen by a  
10 counselor?

11 A. Yes.

12           MS. HAY: And, Your Honor, at the previous hearing  
13 I submitted a defendant's exhibit. It was then marked 102.  
14 It's a letter from the counselor and an interview with the  
15 counselor. I'd like to resubmit those. I may need to  
16 renumber them -- I'm not certain what number we're up to --  
17 just to make sure the record has those documents in it.

18           Maybe the clerk could help me figure out the  
19 numbering later.

20           THE COURT: If it's already been admitted once, I  
21 don't think you need to do it again. Just provide me a copy  
22 so that I can see it.

23           MS. HAY: Okay.

24           THE COURT: Although, I don't know. Maybe they  
25 were returned to you after the last hearing.

1 MS. HAY: I believe they were attached to the  
2 pretrial services report and kept on the confidential side  
3 of the Court's file.

4 THE COURT: Okay. So just provide me a copy, and  
5 I think that's all that will be needed.

6 MS. HAY: Thank you, Your Honor.

7 BY MS. HAY (Continuing)

8 Q. Now, right now you are -- you're caring for Ronai while  
9 your sister is in custody; is that right?

10 A. Uh-huh.

11 Q. Have you tried to keep him in as stable of a situation  
12 as you can?

13 A. Well, yes. Sammy explained that it will be really  
14 important for him to stay in the same school, and she  
15 suggested that I need to go talk to principal. After  
16 talking to his principal, he agreed, because Ronai is in  
17 same school since first grade, and he thought that for  
18 Ronai's best interest will be to stay in the same school.

19 However, we live in the Hillsboro School District,  
20 and Ronai's school is in Beaverton School District. We had  
21 to go through the process that we requested from Hillsboro  
22 School District for Ronai to be released and -- and  
23 Beaverton School District accepted him under circumstances  
24 because of his background and --

25 Q. Okay. Do you drive him every day?

1 A. I drive him every morning, and my husband picks him up  
2 after school at 3:00.

3 Q. You are currently -- you're aware of a custody  
4 proceeding about Ronai that's ongoing right now; correct?

5 A. Yes.

6 Q. And are you -- what have you been told about whether  
7 you can have custody of Ronai?

8 A. No. As a result of me not having custody of Ronai,  
9 Ronai had to go through a few months without glasses,  
10 because his father will not give me power of attorney to get  
11 him glasses. We didn't have the Court that he can stay  
12 legally until -- for -- at our place until we see what's  
13 going to happen with his mother.

14 At that time -- at that point, I guess, the Court  
15 ordered that I can take care of Ronai until we find out  
16 what's going to happen with Sammy. And then Ronai got  
17 insured, and we took him to the doctor and dentist. But his  
18 father refused to send him for therapy or for eye doctor or  
19 anything.

20 Q. So right now his father has a temporary emergency  
21 custody order; is that right?

22 A. That's correct.

23 Q. And the judge said that Ronai can still stay at your  
24 house temporarily?

25 A. Uh-huh.

1 Q. But they're making a decision about who's going to get  
2 custody?

3 A. That's correct.

4 Q. And has the lawyer told you that because you're not the  
5 parent you're not going to get custody?

6 A. That's correct.

7 Q. So the blood relatives are the ones who have to have  
8 custody based on the Oregon law?

9 A. That's correct.

10 Q. If Ronai were to live with you for a longer period, is  
11 there a chance over time that you would be able to get  
12 custody?

13 A. If he demonstrated we are good psychological parents  
14 and that we are providing the stuff that Ronai needs, that  
15 we could become -- we could get custody at some point.

16 Q. But you've been told that -- so he hasn't lived with  
17 you long enough?

18 A. Not long enough. But this is not -- it's pretty much  
19 all still with what's going to happen with Sammy. And if  
20 Sammy gets released temporarily and stays with Ronai, and  
21 I -- I think we will have more chance to help Ronai in his  
22 case.

23 MS. HAY: Thank you. I don't have any further  
24 questions.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

1 BY MR. ATKINSON:

2 Q. Well, the custody matter is being handled in state  
3 court out in Washington County; is that right?

4 A. That's correct.

5 Q. In Hillsboro; is that right?

6 A. Right.

7 Q. And are officials from the Oregon Human Services  
8 Division involved at all?

9 A. I don't know. What do you -- I mean, I didn't talk to  
10 anybody.

11 Q. A judge will be -- a state court judge will be  
12 presented with -- with the equities and facts of this case  
13 and make a decision?

14 A. Uh-huh.

15 Q. Isn't that true?

16 A. The judge make decision? Yes.

17 Q. Yes.

18 And, more likely than not, a representative of the  
19 state agency that's responsible for the welfare of children  
20 will weigh in on this and help the Court make that decision.

21 Isn't that true?

22 A. Well, I don't think that anybody is involved. My  
23 understanding is that from the last hearing the judge was  
24 strongly leaning towards that father -- biological father is

1 father and -- in other words, that he was -- that he should  
2 be --

3 Q. Well, if the father were -- were not a good parent or  
4 were abusive or did not take good care of Ronai, all of that  
5 could be presented to the state agency that's responsible  
6 for the welfare of children here in Oregon. Isn't that  
7 true?

8 A. Yes. But his father lives in Canada. His intention is  
9 not to take him to Canada. His intention is to take him to  
10 Turkey; to his family.

11 So he is not -- his intention is not to take care  
12 of him. He just wants to get the custody. As soon as he  
13 gets custody, he wants to take him to Turkey, and he is not  
14 a Turk. He's a Kurd. And Ronai is American.

15 Q. So who has made someone from the responsible agency  
16 here in Oregon aware of all these facts?

17 MS. HAY: Your Honor, maybe the Government could  
18 clarify what responsible agency he's talking about.

19 MR. ATKINSON: I'm talking about Human Services.

20 MS. HAY: I don't think Human Services is involved  
21 in this.

22 THE WITNESS: Nobody is involved. His father  
23 came --

24 BY MR. ATKINSON (Continuing)

25 Q. You have not made anyone from the Human Services

1 Division aware of any of this and asked --

2 A. I called --

3 Q. -- them to intervene?

4 A. Sorry. I didn't mean to interrupt.

5 I called every single phone number. This country  
6 doesn't have anything to prevent child's welfare. This  
7 country has stuff to save kids that are already abused.  
8 There's no agency in this country that will help in Ronai's  
9 case. I have no rights to anything. I'm not the mother.  
10 I'm not the father. I have been taking care of Ronai since  
11 he was three months. I move in with Sammy in August of 1999  
12 and lived with her and closely in the neighborhood of a  
13 distance of 3 miles, at most, in the last 12 years.

14 But there is no agency that will do -- listen to  
15 me. I call every single phone number in Oregon. Anything  
16 involved with child services, anything, there is nothing  
17 that will do prevention of a child.

18 Ronai is 12 years old. He doesn't have a  
19 relationship with his father. And the only thing he  
20 experienced was bad. Including, like, the judge ordered a  
21 two days' visit with his father. His father locked him in  
22 the car to sit while he's in a meeting.

23 THE COURT: I think I understand from her  
24 testimony that for whatever reason Oregon DHS is not  
25 involved, but it is a matter pending in the Washington

1 County Circuit Court.

2 MR. ATKINSON: I don't have any further questions.

3 THE COURT: All right. Any redirect?

4 MS. HAY: No, Your Honor.

5 THE COURT: Thank you. You may step down.

6 MS. HAY: Your Honor, I want to acknowledge that  
7 other people submitted letters. I know Mr. Samuel Park is  
8 here. He's a family friend and has known Ms. Handanovic for  
9 some time and wrote a letter, but I think the witnesses  
10 we've called today so far have put forward enough of the  
11 evidence that I wanted to have about her character and --  
12 her character both back in Bosnia and back here in the  
13 United States, so I won't call any further fact witnesses  
14 like that.

15 I let the Government know that I won't try to call  
16 an expert today either, so I think we're ready to just argue  
17 the case.

18 THE COURT: Just so I'm clear, I know that with  
19 your memorandum you submitted several exhibits. The notice  
20 of this court proceeding in the custody matter, a statement  
21 from Mirsada Guild, and an investigator's confidential  
22 memoranda summarizing statements by several individuals.

23 You keep mentioning letters. I'm not sure I know  
24 what you're referring to, other than those submissions.

25 MS. HAY: After that document, Your Honor, and

1 after the Government responded, I did file a reply that  
2 included --

3 THE COURT: Oh, with your reply?

4 MS. HAY: Right.

5 -- letters from supporters. And, in addition to  
6 that, there is an exhibit that was an affidavit from an  
7 interpreter noting a mistranslation in the fact section of  
8 the Government's evidence against Ms. Handanovic.

9 THE COURT: Okay. So I take it that is the  
10 evidence at this point. It is your motion, Ms. Hay, so if  
11 you would like to make argument at this time in addition to  
12 what's already been presented, please do.

13 MS. HAY: Thank you, Your Honor.

14 Your Honor, we recognize that in extradition  
15 proceedings that the standard is to have somebody kept in  
16 custody, but the case law recognizes that there are  
17 exceptions to that standard. And just as in any other case  
18 when we're before a magistrate judge in a criminal case, the  
19 Court has to make a decision about flight risk and danger  
20 and then whether there are any special circumstances that  
21 would support release in this case.

22 When we originally appeared in this case,  
23 Your Honor, it was only a few days after Ms. Handanovic had  
24 been arrested. The Government had presented us with a  
25 binder of a number of documents that I was not able to

1 digest in the few days between when she was first arrested  
2 and the two days when we had a hearing. I think there was  
3 some misstatements at that hearing about what the evidence  
4 was against her, and we appreciate the chance to try to  
5 convince the Court today that, in fact, despite any previous  
6 findings in the case, now that we've been able to put on  
7 witnesses and have looked at the actual evidence presented  
8 by the Government, Ms. Handanovic is not a flight risk or a  
9 danger.

10           The Court's familiar with the citing flight risk.  
11 It's the same standard that we could use in any of our  
12 cases. The Government has called her a fugitive. And, yet,  
13 we know from the hearing before, that she's not a fugitive.  
14 She left a war-torn country under her own name and applied  
15 for protection here in the United States. She admitted that  
16 she had been in the Army. She came here legally. She  
17 became a U.S. citizen.

18           At a prior hearing the Government discussed her  
19 name changes, but we know she was married and that was the  
20 cause of her name change and that she gave all of those  
21 names to the U.S. Government. So she's never been hiding.  
22 She's never been a fugitive. She's never been running from  
23 this.

24           I think that was a misperception at the earlier  
25 hearing, and I hope throughout this case it's been cleared

1 up that she is, in fact, not somebody who has fled.

2 She's a U.S. citizen now. She's lived exclusively  
3 in the Portland area since she came to this country in 1996.  
4 She has strong family ties here in Portland. You've heard  
5 from both her sister and her brother-in-law she has a strong  
6 work history here. The pretrial services report documents  
7 the work what she had done, and we heard from one of her  
8 supervisors. She had a stable residence, before being  
9 arrested, with a known address, and that was on her driver's  
10 license and elsewhere. She's raising a family here. Her  
11 son is in school. And she has no criminal record, no  
12 history of substance abuse or addiction, no failures to  
13 appear.

14 And she's been aware of the potential of charges  
15 like this for some time. I presented to the Court last  
16 time, and I believe it's still an attachment to my exhibits  
17 in support of my first motion back in April, I have an  
18 article, Defendant's Exhibit 104, which is about people  
19 being arrested in the Zulfikar Army unit in February of  
20 2010. That was available on the Internet. That was known  
21 to Ms. Handanovic. This is not a -- this was not a  
22 surprise.

23 So the fact that this was an open investigation,  
24 that people were being arrested and that she stayed here  
25 anyway, she's continued to live here under her own name,

1 shows that she -- there's no way that she's a flight risk.  
2 Not -- not a single one of the factors we used to determine  
3 whether someone is a flight risk indicates that she would be  
4 a flight risk in this case.

5 Your Honor, Ms. Handanovic is willing to surrender  
6 her passport, her son's passport, to be on an electronic  
7 bracelet, to be on home detention at her sister's house.  
8 She would follow all of those conditions, because, as you  
9 heard, one of the issues in this case for her is the welfare  
10 of her son.

11 If she could be living out of custody in the  
12 community, she could continue being the actual legal  
13 custodian of her son during the time that she's here. Every  
14 month that goes by that she could be here with her sister  
15 and her son is further time that her sister can use to tell  
16 the Court that she is also developing a parental  
17 relationship with the child, and, eventually, hopefully, in  
18 Washington County, can convince the Court that this is a  
19 family unit, that the son is part of it, and that he should  
20 not be taken out of there.

21 The standard that the Court is using right now is  
22 that when one parent is incarcerated, the other parent is  
23 the assumed natural custodian and that family members do not  
24 take precedence.

25 What we've understood is that the longer the child

1       lives with family member, the better the chances are that  
2       the family member could assume parental rights.

3                 But the time has essentially run out. The Court  
4       has postponed that hearing, as my document showed, several  
5       times. They're trying to resolve the custody issue. And  
6       one way that Ms. Handanovic could solve that would be out of  
7       custody, on an ankle bracelet, with her son.

8                 So, Your Honor, all -- all the questions about  
9       flight risk, I think those all weigh in favor of release in  
10      this case.

11                 In the same way the risk of dangerousness, I  
12      think, was maybe unfairly portrayed at the last hearing. I  
13      recall the Government saying Ms. Handanovic is charged with  
14      shooting 16 people. There -- the number 16 is in this  
15      document; but, in fact, from our review of them now and  
16      having the Court -- the Court go through them, we know that  
17      there was allegedly about five people at a firing squad  
18      where Ms. Handanovic is alleged to have been one of the  
19      people. There were a few other civilians where  
20      Ms. Handanovic is alleged to have been involved.

21                 The other numbers that the Government brought out,  
22      those are other people who are charged with doing that.

23                 Now, the Government's view is Ms. Handanovic is  
24      responsible for those, but many of those she's not even in  
25      the area. So it's not fair to say that Ms. Handanovic has

1 the blood of 16 people on her hands, as the Government said  
2 at the previous hearing.

3 And, furthermore, now that we've gone through  
4 these facts, it's very clear that this was a single day in a  
5 war when Ms. Handanovic was part of a military unit as a  
6 foot soldier, not a leader, and was following orders about  
7 what's happening in this village.

8 Clearly, the Government's view is other things  
9 occurred. People didn't follow orders exactly. But this is  
10 not the same as somebody going into a high school and mowing  
11 people down with machine guns.

12 When you say somebody has got 16 bodies on their  
13 hands, it sounds like a single act of demented violence.  
14 That's not what was happening here.

15 So I think if we look at the facts fairly and have  
16 listened to the witnesses, Ms. Handanovic is not a dangerous  
17 person. She's not somebody who acts out in rage. She's  
18 never expressed bias or anger based on religion or  
19 ethnicity. So the question about whether she would be a  
20 danger to anyone is whether 18 or 19 years ago, as a  
21 22-year-old young woman, she committed acts for which she  
22 should be punished. Those don't make her a danger today.

23 So, Your Honor, I don't think there's any evidence  
24 that she is a danger, and we put forth significant evidence  
25 that she is not a danger to anyone. She is a good mother, a

1 good neighbor, a caring person, and not someone who acts out  
2 in violence.

3 So the last issue is whether there are any special  
4 circumstances that would warrant release when she's  
5 considered to be not a danger or a flight risk.

6 The case law says that there are -- the  
7 district -- the magistrate court has discretion in this  
8 matter. That there's not a single list of circumstances.  
9 There's not a checklist that you have to go through. There  
10 are a number of different ways that the Court should decide  
11 someone should be released. I cited in my brief several  
12 different cases where the defendants, in fact, were released  
13 in extradition proceedings.

14 In one case the defendant was charged with murder  
15 in Mexico, with an intentional murder of actually --  
16 actually trying to hurt somebody in a nonwar setting, and  
17 that defendant was released.

18 There are different grounds the courts rely on;  
19 but, Your Honor, some of the issues that we can look at here  
20 are in those cases. One is that the length of the  
21 proceedings here are likely to be very time-consuming.  
22 Ms. Handanovic has already been in custody now six months as  
23 we've worked through this. It's a complicated question.  
24 I'm not blaming that delay on the Government. I've needed  
25 some time, too. It's not something that's a standard

1 proceeding that we do every day here, and it takes time to  
2 understand all this law.

3 Now we have the next steps continuing briefing  
4 about the possible certification order by this Court. We  
5 have a question of whether the Secretary of State would  
6 actually order the deportation of a -- or the extradition of  
7 a U.S. citizen, and we have a question of an appeal.

8 And I know Your Honor has made some initial  
9 rulings that go against the defense and that, for example,  
10 uphold the treaty and say that there's probable cause here,  
11 but I think some of those questions are clearly ones that a  
12 higher court could disagree on, and I would like the  
13 opportunity to raise those issues and have another court  
14 look at them. In part, because, as Your Honor recognized,  
15 this is an old treaty and at some point a court should stop  
16 this.

17 Now, you are bound in some ways by the  
18 Ninth Circuit precedent that upheld the treaty before, but I  
19 think the Ninth Circuit might look at this and think  
20 differently. But, Your Honor, trying to do that appeal  
21 while Ms. Handanovic is in custody is -- is a very difficult  
22 decision, because she might not get credit for any of this  
23 time that she's here. The law says that none of this time  
24 would count against any sentence if she were to get one in  
25 Bosnia.

1                   So in order to pursue those, she has to continue  
2 to be incarcerated, when, in fact, there's no good reason to  
3 do that. She would easily stay here. We could work on  
4 this. She could be at home with her son. She could be  
5 caring for the people she needs to care for.

6                   So, Your Honor, I think that's an important  
7 circumstance and a special circumstance the Court could  
8 consider.

9                   In addition, I submitted, last time, a letter from  
10 the doctor at OHSU who has been treating Ms. Handanovic  
11 since 2009, treating her for depression, for posttraumatic  
12 stress disorder, the trauma caused by war. That doctor  
13 indicated that it would be detrimental for her to stay in  
14 custody; that what she needs is the continuing medication  
15 and therapy that she had been getting there and that he felt  
16 that it would be detrimental to her health and have  
17 deleterious consequences for her to continue to be in  
18 custody.

19                  Now, six months have gone by. She's receiving  
20 medications while in custody. When I talk to her she's  
21 still in pain for fibromyalgia. She's not able to get the  
22 same medications she had been getting before. This  
23 defendant's exhibit from the doctor lists two, three, four,  
24 five -- five different medications that she had been  
25 prescribed. These are not all available to her in custody

1 and her health is affected by this.

2           The courts have noted that deterioration of health  
3 and health circumstances are a factor the Court can  
4 consider. We've heard evidence that she suffers from  
5 fibromyalgia. That's something that causes your whole body  
6 to ache. Being incarcerated and being in chains, as she is  
7 here, is -- is made much worse by that kind of condition.

8           Finally, Your Honor, I'd ask the Court to consider  
9 the extraordinary harm to the dependent here, her son, by  
10 maintaining her in custody. We presented to the Court  
11 before with letters from the treating therapist about her  
12 son's need to be with his mother and some of the issues that  
13 he has. The new event that's occurred is the father coming  
14 in and getting a custody order and litigating this custody  
15 issue in court. That's developed since she was  
16 incarcerated.

17           As you heard from the witness, this is obviously a  
18 very traumatic issue for the family. They do not want this  
19 young U.S. citizen, who's 12 years old, to be taken from  
20 this country, but they're hearing that there may be no way  
21 to prevent that. And the one way they know that they could  
22 prevent that would be if Ms. Handanovic were out of custody  
23 and could still continue to be a caretaker for her son.  
24 Because there's no question that she was a very supportive  
25 and loving mother; that she was doing everything that she

1 could to care for her son. And I have no doubt that the  
2 Washington County judge, given the option between a father  
3 who has not been involved in this child's life and is not a  
4 U.S. citizen and the mother, on an ankle bracelet, confined  
5 to the home, but, nevertheless, a loving mother, that he  
6 would choose that mother as a person to care for the child.

7           The overall benefit, even if she must eventually  
8 go back to Bosnia, is that the child would be with the aunt  
9 for a longer period, as well, because they could live  
10 together and the relationship between them would be allowed  
11 to be considered a parental relationship where the Court  
12 eventually could consider that this child has been cared for  
13 by the aunt, and she can -- he can weigh that against the  
14 father's rights.

15           From my understanding of the Oregon law on  
16 parental rights is that the time period that this child has  
17 been cared for so far is not enough to outweigh the father's  
18 rights. That's just the way the law works, and there's not  
19 a strong way around that.

20           So, Your Honor, that's an extraordinary  
21 circumstance that this Court could consider. And given that  
22 Ms. Handanovic is not a flight risk or a danger, it would be  
23 the right decision in this case to release her now on an  
24 ankle bracelet and that would allow us to continue to work  
25 on the case and to get the right decision without feeling

1       rushed or without sacrificing the kind of briefing that we  
2       might require for an appeal.

3                  Thank you.

4                  MR. ATKINSON: Your Honor, when we filed our  
5       opposition, we made our position very clear, in that  
6       post-certification, the Court is obliged to hold a fugitive  
7       or a subject of an international extradition case, such as  
8       Ms. Handanovic, in custody. The statute 18 §3184 is really  
9       quite clear. It holds that if on an extradition hearing you  
10      deem the evidence sufficient to sustain the charge -- which  
11      you have done -- you shall issue a warrant for the  
12      commitment of the person so charged to the proper jail,  
13      there to remain until such surrender shall be made.

14                 That language is clear, it's unmistakable, and  
15      counsel and Ms. Handanovic misapprehend the application of  
16      the special circumstances test and the availability of bail  
17      in the procedural posture that we have for this case right  
18      now.

19                 The language is mandatory, it's unmistakable, and  
20      it's supported by Supreme Court precedence. Specifically,  
21      *Wright v. Henkel*. *Wright v. Henkel* recognized what is  
22      apparent from the reading of the statute, and that is that  
23      the statute is silent about the availability of bail  
24      precertification. And *Wright* held that in the face of that  
25      silence the Court was hesitant to hold that bail was

1 unavailable, but it did recognize that there were  
2 significant reasons to make the availability of bail  
3 something that was difficult to obtain, rare, and that would  
4 require special circumstances, and that would be a situation  
5 where there would be a strong presumption in favor of  
6 detention.

7           The Court also noted or held very clearly that it  
8 would be inconsistent with the statute. A statute, by the  
9 way, that has not changed with respect to the mandatory  
10 nature of detention post-certification, since *Henkel* was --  
11 *Wright v. Henkel* was decided.

12           It would be inconsistent with that statute to  
13 consider bail post-detention. There's just no mistaking it.

14           Had Congress intended for there to be bail  
15 applicable after the Court certifies an individual for  
16 extradition, it would not have enacted the statute, and we  
17 wouldn't see this sort of language. It's just very clear,  
18 in the Government's perspective.

19           Ms. Hay did not -- for some reason did not see fit  
20 to even respond to the Government's argument.

21           Now, there is circuit authority, specifically the  
22 *Salerno* case, and a smattering of authority around the  
23 country where courts have allowed bail post-certification,  
24 but none of those cases talk about the application of §3184  
25 and its mandatory nature.

1           And, admittedly, the Government simply didn't  
2 argue the effect of §3184, because those -- those cases just  
3 don't address it whatsoever.

4           Despite that, our view is that the Supreme  
5 Court -- Supreme Court's ruling in *Wright v. Henkel* is  
6 binding on this Court and it's mandatory, and the statute is  
7 quite -- it's just not susceptible of any other  
8 interpretation.

9           So I would ask you to find and to hold that you do  
10 not have the authority to release her at this stage. If one  
11 were to turn to the merits of the release decision, and I  
12 ask that you not do that, but if you were to turn to the  
13 merits, the facts of this case speak for themselves,  
14 Judge Stewart.

15           You have just found probable cause to believe that  
16 Ms. Handanovic is responsible for murder in the first  
17 degree. Counsel argues that perhaps she's only personally  
18 involved in the death of eight people, rather than 16. Now  
19 there's a distinction without a difference. Eight people,  
20 Judge, who have lost their lives as a result of  
21 Mr. Handanovic and her -- and her colleagues in incidences  
22 in which she was directly involved.

23           The evidence is -- is that she advocated for the  
24 death of those prisoners in Gaj that -- that morning. She  
25 advocated that they'd be lined up and shot. And, of course,

1 the evidence is very clear that she stood over them -- stood  
2 over them -- and any that were showing signs of life she  
3 killed or shot again. Those facts, in and of themselves,  
4 speak a significant potential for danger.

5 Now, on top of that, you have the pretrial  
6 services report, a report from the marshals that when she  
7 was taken into custody Ms. Handanovic had threatened to  
8 commit suicide if she was not released. If she is so -- if  
9 she's willing to commit suicide in order to prevent her  
10 staying in custody for her extradition, she poses a danger  
11 to any deputy United States marshal sent out to arrest her  
12 when it's time to surrender, when it's time to take her into  
13 custody in order to deliver her to authorities from Bosnia.

14 This is a woman who, the evidence shows, based  
15 upon the sealed exhibits that I submitted with the United  
16 States' opposition, has specialized military training,  
17 explosives training, special forces training, and who has  
18 attempted to commit suicide on several prior occasions.  
19 Someone who's mentally unstable, has threatened to commit  
20 suicide, and has attempted to commit suicide is not a good  
21 release risk, Judge Stewart, I'd submit to you.

22 And someone with that sort of military training,  
23 who is so desperate that she's threatening to commit suicide  
24 if she's not released from custody poses a danger to anybody  
25 who would have to go out to arrest her.

1 Now, Counsel says that she is not a risk of  
2 flight. I'd submit that the potential penalties that she  
3 faces in Bosnia, the relative proximity of Canada, and the  
4 fact that she does drive, and the fact that even if she were  
5 on electronic monitoring there's no way that law enforcement  
6 would be able to effectively intercede and apprehend her  
7 were she to decide to grab her son and make a run for the  
8 border, all of those facts make her a flight risk.

9 This is a woman whose instability is evidenced by  
10 her own words, by the -- her prior attempts at suicide, the  
11 fact that she's a -- I -- I don't mean to say this for any  
12 point other than the point I'm about to make -- the fact  
13 that she has -- suffers from bipolar mental disorder, severe  
14 depression, and has been suicidal and engages, apparently,  
15 in suicidal ideation, all make her a risk of flight and an  
16 unstable individual. Despite the testimony that you've  
17 heard today, this is evidence that is just undisputed. She  
18 admits that she has engaged in these things and suffers from  
19 these -- from these illnesses.

20 When she first came into court back on the 11th,  
21 we saw evidence of her instability. She was wailing,  
22 screaming, knocking her head against the walls. She was a  
23 problem when she came into court. She is emotionally  
24 unstable, Judge, and if she were to go off her meds or if  
25 she were to have a downturn with her -- with her manic

1 depressive illness, she could very easily decide to make a  
2 break, and she could very easily pose a danger to those who  
3 would be sent to arrest her or try to engage in enforcement  
4 action against her.

5 She argues that we should release her for the  
6 benefit of her child. There's case law citing the  
7 Government's memorandum to the effect that that is not a  
8 special circumstance, even if the Court were to rule that it  
9 could consider bail in this case. But I would ask you to  
10 allow the best interest of the child to be attended to by  
11 those whose responsibility it is to ensure the child's  
12 interests are attended to. That is the circuit court out in  
13 Washington County and the Children's Services Division  
14 representatives who could easily be brought into this case.

15 I have every confidence that the judge assigned to  
16 this custody case is going to make decisions in the best  
17 interest of Ms. Handanovic's child, and I'd ask that you  
18 have that same confidence.

19 Counsel argues that one factor that we ought to  
20 take into account here is the length of time that it will  
21 take to pursue her appeals. This is a difficult  
22 circumstance, because that length of time is sort of, in a  
23 way, a self-inflicted wound. In the Government's view,  
24 there have been multiple extraditions in modern times, since  
25 the independence of Bosnia and Herzegovina, under this

1 treaty. It's pretty well established that this is a valid  
2 treaty. And every court to have considered the issue has  
3 ruled that it is.

4 Ms. Hay, with all her skills of advocacy and her  
5 tremendous legal research skills has mounted the best  
6 argument that she can in her client's behalf. I respect her  
7 for that and commend her for it. I'm sure that she'll  
8 continue to do that, and I have every confidence that  
9 Ms. Handanovic will be well represented. But this is a  
10 cause that is not -- it does not have a high prospect of  
11 success in court's down the road, I'd submit, given the  
12 precedent that we have here; the fact that this -- every  
13 court has ruled that this treaty is still valid.

14 There's just ample evidence of probable cause. We  
15 may dispute the exact number of murders for which she's  
16 responsible and the exact facts, but there's just no  
17 question that there's probable cause to believe that she's  
18 guilty of murder in the first degree, multiple victims, and  
19 that's really all we need to consider for the purposes of  
20 her prospects for countering your ruling on appeal that  
21 there's probable cause to believe that she committed murder  
22 in the first degree.

23 Finally, I'd submit that there was ample evidence  
24 upon which to deny her release initially. Now we're at a  
25 stage where the Court has found probable cause to believe

1 her guilty of murder in the first degree and her extradition  
2 is a step closer to being accomplished. If there -- if she  
3 was a risk of flight initially when Judge Ashmanskas heard  
4 the case before the extradition hearing, given the fact that  
5 her extradition is that much closer and that much more  
6 certain, makes her an even greater risk of flight.

7                  For those reasons, I would ask you to deny this  
8 bail request.

9                  MS. HAY: If I could respond briefly, Your Honor.  
10 On the legal issue, I believe we still are in the  
11 precertification phase here. The Court has not, in fact,  
12 issued a certification order. The Government has submitted  
13 a proposed order of certification. I still have another  
14 week, I think, to file a reply to what I believe are errors  
15 in that order and in the Government's explanation of it, so,  
16 in fact, we are in the precertification phase still. This  
17 Court is not bound by the case law the Government cited.

18                  And, in fact, the binding cases in the Ninth  
19 Circuit on this issue do not distinguish between  
20 precertification and post-certification.

21                  As the Government acknowledged, in the Ninth  
22 Circuit defendants have been released and the special  
23 circumstances has been argued without any regard to  
24 precertification or to post-certification. So what the  
25 Government is asking you to do is to disregard the

1 Ninth Circuit precedent and to rely on an argument they're  
2 making now that -- when I glanced through their cases, and,  
3 frankly, I wasn't able to open their memorandum on the  
4 system for some reason. We had some difficulty with that.  
5 Mr. Atkinson eventually e-mailed it to me, but I didn't have  
6 the time to file a legal reply to it. But when I looked at  
7 his cases, they're not citing cases that support their  
8 argument at all. They rely on *Wright*, which makes a  
9 distinction looking at a different version of the statute  
10 and then discusses release and special conditions. Later  
11 cases have rejected the argument the Government makes now.

12 In fact, they cite, in a footnote, a recent case  
13 from the Central District of California, from 2009, which  
14 not only rejects the argument, but explicitly goes through  
15 it and says this is not -- this is not the law; that the --  
16 this is not a -- the footnote on page 10, footnote three of  
17 their brief. They mention it in a footnote. But, in fact,  
18 that case says there is a federal common law of release in  
19 extradition cases that the Supreme Court recognized in  
20 *Wright* and that still exists and the distinction between  
21 precertification and post-certification is not a distinction  
22 recognized in the law. It's a distinction the Government is  
23 raising now based on the statutory language. But the  
24 century of federal common law that's developed around  
25 extradition says there's a federal common law that does

1 recognize special circumstances. So I don't think the law  
2 is nearly as clear as the Government suggests.

3 And, frankly, I didn't find a case, in looking at  
4 these, that they're citing any case that actually upheld  
5 this argument. Their cases are upholding the idea that  
6 statutes should be read clearly. But, in fact, the cases  
7 they cite are -- they're trying to distinguish later cases  
8 where courts, in fact, release people even  
9 post-certification; that those are the cases we've all  
10 looked at; those are the cases of the Ninth Circuit. There  
11 hasn't been a distinction recognized in this circuit,  
12 certainly, based on those -- based on that argument.

13 So I don't think the Government's argument -- even  
14 though superficially it has an appeal based on the statute,  
15 I think that the cases that say there's a federal common law  
16 of release in this cases that has to be recognized is the --  
17 is the precedent this Court should follow. If that  
18 precedent is wrong, the Government can try to bring that up  
19 with a higher court, just as they're arguing that I'll have  
20 to do with my arguments, because the other courts have  
21 precluded it. I don't think the Court should rely on that  
22 legal argument to deny release in this case.

23 On the question of probable cause that she  
24 committed first degree murder, I want to be sure it's clear  
25 that we deny that she committed those offenses. And all the

1 Court has found here is an initial finding of probable  
2 cause; not proof beyond a reasonable doubt, not something  
3 that could ever have her convicted. It's a very low  
4 standard and doesn't mean that Ms. Handanovic actually did  
5 these acts that the Government has accused her of.

6 The claims of threatened suicide, Your Honor, I  
7 think if you look at the Government's documents, it's clear  
8 that in fact what happened was she was arrested in the early  
9 hours of the morning, half naked, by the marshals, from her  
10 home. You can imagine the disarray when her elderly  
11 parents, who don't speak English, were there, and her son,  
12 and they come to the door, break in to arrest her. She's  
13 not sure what's happening. These are men in uniforms. She  
14 suffers from PTSD, which she explained later to the people  
15 who are discussing -- talking to her in the jail, was that  
16 the blue uniforms and the effect of the military appearance  
17 caused her to be distraught; the handcuffs. The differences  
18 in the way different prisoners were being treated caused her  
19 to have concerns about whether she was going to be isolated  
20 or create -- treated somehow differently, and that was what  
21 some of the initial distress was about.

22 The last page of the Government's brief is -- or  
23 their exhibit, which are the log notes from the sheriff's  
24 office is from October of this year, and it says, per the  
25 captain, Inmate Handanovic has no negative notes in the red

1 book. He stated no issues or concerns related to behavior.  
2 Per previous chronos, she's classified to general housing.  
3 There's no housing changes.

4 So after the initial shock of being arrested,  
5 the -- I guess the distress caused by that and after talking  
6 with the counselor she has managed to control a lot of those  
7 issues. Clearly, being incarcerated is very difficult for  
8 her, but I don't think those are grounds to say that she  
9 should be held or she's a danger in any way.

10 She's receiving her medications. She understands  
11 the reasons she's here now. She's not as distraught and not  
12 feeling that she's being treated by a militaristic unit.

13 As for the Government having every confidence the  
14 judge will make the best decision, judges are bound by the  
15 law, and the law in Oregon says that parents have first  
16 rights to custody of their children. And when one parent is  
17 incarcerated, the other parent is the first in line to have  
18 custody. That's the law, and I know that Ms. Handanovic's  
19 sister has done everything she can to try to find a way to  
20 get someone to listen to her about what might be different,  
21 but I think you could hear the distress and the way she  
22 feels that she's not been able to find somebody who will  
23 intervene in a case where there's no allegation of abuse, no  
24 child in danger. Human Services are not interested in that  
25 kind of case. This is a custody case. And the effect is a

1 special circumstance this Court can consider.

2 Releasing Ms. Handanovic on a bracelet to go stay  
3 at the home would solve this very important family issue  
4 that's a matter of a great deal of trauma for them. There's  
5 no danger or flight risk as we've now been able to put  
6 forward with many witnesses and as we looked through the  
7 exhibits. It would allow us the time to thoroughly review  
8 the law, that we want to file the appeal, and to ensure that  
9 Ms. Handanovic is treated fairly under the laws.

10 She's a U.S. citizen, and I would like a chance to  
11 represent her and make the arguments that I think should be  
12 made on her behalf without having her suffer through  
13 incarceration as we make these legal challenges.

14 This Court has the authority to release her and  
15 the facts to support release.

16 THE COURT: Well, you've both submitted written  
17 arguments as well as oral arguments and evidence and all of  
18 which I have carefully reviewed in advance of the hearing,  
19 and of course I've listened closely to what you presented at  
20 the hearing.

21 As we all agree, there's no statutory right to  
22 bail or to release in international extradition proceedings.  
23 In the *Wright* case, which you've referenced, in 1903 the  
24 Supreme Court did recognize that special circumstances may  
25 render release appropriate to one who's facing extradition

1 proceedings.

2           The Government has made an argument that *Wright*  
3 involved only a release decision precertification and that  
4 there is a different standard that must be applied under  
5 18 U.S.C. §3184 after extradition is ordered.

6           Now, you're right, Ms. Hay, that, technically,  
7 we're still in the precertification stage. I've indicated I  
8 will certify it. We just need to get the order signed with  
9 the right language. It really would be rather futile to  
10 release someone for a couple of weeks, knowing that the  
11 minute the certification order is signed that person would  
12 have to go back into custody.

13           As far as I'm concerned, at this juncture I need  
14 to consider the standard post-certification.

15           To me, the statutory language is very clear. It  
16 says: The judge, quote, shall issue his warrant for the  
17 commitment of the person so charged to the proper jail,  
18 there to remain until such surrender shall be made.

19           Admittedly, there are some cases, such as *Salerno*  
20 which have considered special circumstances, even  
21 post-certification, but I agree with the Government that  
22 none of those cases address the argument that the Government  
23 is making today. It simply was not an issue in those cases.

24           The only cases I've been able to find to address  
25 this issue is the *Garcia v. Benov* case from the Central

1 District of California in April of 2009. That case did, in  
2 a lengthy footnote, reject the argument made by the U.S.  
3 that's being made here today.

4 Frankly, I read that, and I have to conclude that  
5 that court misread *Wright*. I agree with the Government's  
6 argument here.

7 In *Garcia*, the Court there noted that the statute  
8 is silent regarding the availability of bail in extradition  
9 cases that neither provides for no -- nor prohibits it; but  
10 I think that is only true as to precertification. Once the  
11 certification order is signed, the statute is not silent.  
12 It says, very clearly, that the person has to be committed  
13 to remain in jail until surrender.

14 *Wright* did notice this difference in the statutory  
15 language both pre- and post-certification. And as I read  
16 the *Wright* decision, I just can't read it the same way the  
17 *Garcia* court did. I read it the same way the Government has  
18 explained it today.

19 I don't see anything in *Wright* that purports to  
20 grant the judicial power of bail where the statute expressly  
21 bars it post-certification.

22 This is a very interesting legal issue; another  
23 issue that I think is going to be one that would be a very  
24 good issue on appeal.

25 So I'm going to go also to the special

1 circumstances argument, because I acknowledge that this is a  
2 situation where no other court, other than *Wright* and the  
3 Supreme Court, has actually addressed this issue. The only  
4 case out there that I think addresses *Garcia*, another  
5 district court, not binding on this Court, has reached the  
6 opposite conclusion.

7 You wanted to say something, Ms. Hay?

8 MS. HAY: Yes. Thank you, Your Honor. Just, the  
9 language in *Wright*, I think Your Honor is correct that there  
10 aren't other cases that have adopted the Government's  
11 argument. There's this case in the Central District of  
12 California that's rejected it. And I think the language of  
13 the statute doesn't have to be read to include the word  
14 "immediately." That is, it doesn't say, "And then the judge  
15 shall immediately issue a warrant." So I believe this Court  
16 can, because we are precertification, allow Ms. Handanovic  
17 to be released, based on the special circumstances, on an  
18 ankle bracelet; that even after this Court issues an order  
19 of certification, a warrant is not required immediately. At  
20 some point the Court issues a warrant, she has to turn  
21 herself in, and she gets processed and taken to another  
22 country if the State department approves it and if the  
23 appeal fails. But there's no reason that all of that time  
24 she has to be in custody.

25 So, you know, I agree that the language in the

1 statute could be read that way, but it doesn't say that you  
2 have to issue that warrant immediately.

3 So, Your Honor, that's not an argument that I see  
4 in any cases either. When I looked at this, I thought the  
5 Government is taking a 1909 -- is rejecting what has become  
6 federal common law since 1909, since the *Wright* case, that  
7 all cases all around the country have said, yes, there are  
8 special circumstances that allow someone to be released.  
9 And the argument they're making is not recognized in any  
10 cases I could find.

11 So I think if the Court is going to be consistent  
12 and say, you know, we're following other cases that say this  
13 1902 treaty is valid and I have to appeal it, the Court  
14 should follow the federal common law that's been  
15 acknowledged in all these other cases and allow  
16 Ms. Handanovic to be released on this precertification  
17 moment and let the government appeal that issue. They can  
18 try to get another court to agree that that language,  
19 despite not being accepted into any other cases, should bar  
20 release in this case.

21 So, Your Honor, I -- I believe that would be the  
22 right result in this case. And since Ms. Handanovic is not  
23 a danger of flight risk, having her released on a bracelet  
24 would not pose a problem for the Government while they make  
25 that appeal.

1                   THE COURT: Well, it's an interesting argument you  
2 haven't made before; that the statute doesn't include the  
3 word "immediately." I maintain my current view that once a  
4 certification issues, the warrant issues as well. If not  
5 immediately, certainly within a reasonable time; not until  
6 someone deems it appropriate to surrender someone. I -- I'm  
7 not sure that I can adopt your reading of that statute, as  
8 much as it might be helpful to your client here.

9                   But because I recognize there is this issue, this  
10 legal issue concerning interpretation of the statute, I will  
11 turn to the special circumstances test, assuming it is  
12 applicable in this case, which I don't think it is, but  
13 assuming that it is applicable, I'm -- I certainly agree  
14 with -- with you, Ms. Hay, that Ms. Handanovic doesn't  
15 present a danger. These crimes that she's allegedly  
16 committed were 18, 19 years ago, when she was much younger,  
17 and certainly different circumstances, with the horrors of  
18 civil war and ethnic and religious strife.

19                   Perhaps today there's some potential threat of  
20 committing suicide. Although, that seems to be a much  
21 smaller threat now than it was in April. I think as long as  
22 she's on her medications that she's not particularly  
23 unstable mentally. I just don't perceive that at this point  
24 that her release would be a danger either to the community  
25 or to herself.

1           As to flight risk, which is a special or a  
2 separate analysis for special circumstances, I want to make  
3 it clear that under *Wright* my reading of *Wright* is that the  
4 absence of a risk of flight is not itself a special  
5 circumstance, but is an independent consideration that has  
6 to be met. And then on top of that, there have to be  
7 special circumstances for release in extradition  
8 proceedings.

9           And as to a flight risk, I certainly would  
10 conclude, based on the evidence I've seen, that  
11 Ms. Handanovic has certainly made a good life for herself  
12 and her son here in the U.S. She has a strong network of  
13 family and friends. All of them have testified to her good  
14 character and how she's a good mother. All of the indicia  
15 that she poses a low flight risk are present, with the  
16 exception, of course, as the Government has pointed out,  
17 that there's a potentially long sentence should she be  
18 convicted of these crimes in Bosnia and Herzegovina. It's  
19 easy for her to flee across the border to Canada even with  
20 electronic monitoring. It's not a hundred percent  
21 risk-free.

22           So there is some likelihood of flight here that I  
23 have to address. But I certainly agree it's very low in  
24 this case, given the circumstances here.

25           But even if there's not much of a flight risk

1 here, there have to be special circumstances to support a  
2 release decision. And I don't see them present in this  
3 case.

4 In the cases that have been cited in your  
5 memorandum, Ms. Hay, I think the facts there were quite  
6 different. All of those case are quite distinguishable from  
7 the case here, and I don't see any of them being what I call  
8 all fours or in any way persuasive.

9 You're right that the proceedings here could be  
10 lengthy and delayed before there may be an actual surrender  
11 to the Bosnia/Herzegovina authorities. You have some  
12 important issues, perhaps, on appeal, and she may not have  
13 any credit for time served in U.S. custody.

14 But I do agree with the Government that there's  
15 not a strong likelihood that she's going to prevail on her  
16 legal issues, and there's a Ninth Circuit decision that -- I  
17 can give you the cite -- *The Matter of the Requested*  
18 *Extradition of Kirby*, 106 F. 3d 855, Ninth Circuit, from  
19 1997, which basically said the time spent in U.S. custody  
20 was not credited against a sentence imposed is not a special  
21 circumstance.

22 Her health issues could be a special circumstance  
23 if it's a very severe health problem. She clearly has  
24 health issues, but she is receiving medications and  
25 treatment while in custody.

1           Maybe the situation would be different if there  
2 was a severe deterioration of her health in some way because  
3 of custody. I haven't seen that. In fact, the contrary.  
4 She seems to be doing well. Maybe she's not getting the  
5 same medications that she might have received before being  
6 in custody. That's not unusual. A different dispensary,  
7 different medications, but she's receiving treatment. And  
8 so I don't see the type of severe health problem here in  
9 this case that would constitute a special circumstance of  
10 any kind.

11           I acknowledge that being in custody obviously  
12 presents difficulties with respect to her son, especially  
13 with the father in Canada trying to obtain custody; but,  
14 again, I -- the case law is pretty clear in cases cited by  
15 the Government that basically a child's need for a parent,  
16 depravation of a parent's love and support, simply don't  
17 constitute special circumstances. They exist for all  
18 inmates; not just those who are being held in custody  
19 because of extradition proceedings.

20           None of the other sort of factors that in other  
21 cases have constituted special circumstances, as far as I  
22 can tell from the evidence, are present in this case. And  
23 most of the factors that have been presented simply do not  
24 constitute, at this point, special circumstances.

25           So based on my reading of §1834 for

1 post-certification extradition proceedings and based on the  
2 evidence presented and the case law that governs what I deem  
3 to be the special circumstances applicable to  
4 precertification proceedings, I am denying the renewed  
5 motion for release and will retain Ms. Handanovic in custody  
6 pending extradition.

7           I'm certainly sympathetic to you in your  
8 situation, Ms. Handanovic, but you need to understand that I  
9 have to apply the law and I have to apply it to the best of  
10 my ability. And based on the law that I have to follow and  
11 the evidence that's been presented, that's the conclusion  
12 that I'm required to reach.

13           All right. We're in recess. Thank you.

14           (Hearing concluded at 11:20 a.m.)

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## 1 CERTIFICATE

2 I hereby certify that the foregoing is a true and  
3 correct transcript from the stenographic record of the  
4 proceedings in the foregoing matter.

5 /s/ *Jill L. Erwin*  
6 Jill. Erwin, RPR, CRR, CSR  
OR CSR No. 98-0346

Date: 11/9/11

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